

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONUMENTAL LIFE INSURANCE)	
COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:10 CV 1781 RWS
)	
ELAIN KAY YOUNG, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before me on Defendant Garcia's Motion to Substitute Party [#46]. Garcia filed the motion in response to my Order on July 15, 2011 to file a motion to appoint a guardian ad litem to protect the interests of Defendant B.G., a minor, in this case.

Garcia's motion relies on Rule 25 to substitute Ms. Kellie Duncan, B.G.'s mother, as B.G.'s conservator. Rule 25 provides that "[i]f a party *becomes* incompetent the court may, on motion, permit the action to be continued by or against the party's representative." Fed. R. Civ. P. 25 (b) (emphasis added). In his case, B.G. has not become incompetent, but was a minor at the time this suit was filed. As a result, I will deny Garcia's Motion.

"The court must appoint a guardian ad litem-or issue another appropriate order-to protect a minor or incompetent person who is unrepresented in an action." Fed. R. Civ. P. 17(c)(2). Garcia indicates in her motion that she has determined that Ms. Kellie Duncan is B.G.'s mother and that Melvin Griesbauer was B.G.'s father.¹ Garcia's counsel informed Duncan that he would attempt to substitute her in the current case. I will appoint Ms. Kellie Duncan, B.G.'s mother, as

¹Ms. Duncan has been appointed Conservator over B.G. in a probate case pending in the Circuit Court of Randolph County, State of Missouri, Cause No. 03PR176121.

B.G.'s guardian ad litem for the limited purpose of appearing at a status conference on **October 11, 2011 at 10:30 a.m.** in Courtroom 10 South.


Accordingly,

IT IS HEREBY ORDERED that Defendant Kristy Garcia's Motion to Substitute Party [#46] is **DENIED**.

IT IS FURTHER ORDERED that a status conference is set for **Tuesday, October 11, 2011 at 10:30 a.m.** in Courtroom 10 South.

IT IS FINALLY ORDERED that Ms. Kellie Duncan is appointed guardian ad litem for B.G. for the limited purpose of appearing at a status conference on **October 11, 2011 at 10:30 a.m.** in Courtroom 10 South.

The Clerk's Office shall mail a copy of this order to Ms. Kellie Duncan at 2447 HWY 63, Freeburg, MO 65305.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 24th day of August, 2011.